Amendment No. 1
to
Contract No. MA 8700 NS190000031
for
Support and Maintenance of Informa Learning Management System
between
Informa Systems, Inc.
and the
City of Austin

1.0     The City hereby exercises this extension option for the subject contract. This extension option will be effective September 12, 2020 through September 11, 2021. Three options will remain.

2.0     The total contract amount is increased by $59,000 by this extension period. The total contract authorization is recapped below:

| Action | Action Amount | Total Contract Amount |
|---|---|---|
| Initial Term:<br>09/12/2019 – 09/11/2020 | $56,191.00 | $56,191.00 |
| Amendment No. 1: Option 1 – Extension<br>09/12/2020 – 09/11/2021 | $59,000.00 | $115,191.00 |

3.0     By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

4.0     All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: _Elisa Folco_ Digitally signed by Elisa Folco
Date: 2020.08.20 15:58:22 -05'00'

Elisa Folco
Procurement Specialist

City of Austin Purchasing Office
124 West 8th Street
Austin, Texas 78701

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Informa Systems, Inc.
For
Support and Maintenance of Informa Learning Management System
Contract Number: MA 8700 NS190000031**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Informa Systems, Inc. ("Contractor"), having offices at 1320 Arrow Point Dr., Suite 501 #TW79, Cedar Park, TX 78613.

## SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1      **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2      **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3      **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

## SECTION 2. SCOPE OF WORK

2.1      **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

## SECTION 3. COMPENSATION

3.1      **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid in the initial term an amount not-to-exceed $56,191; an amount not-to-exceed $59,000 for the first extension option; an amount not-to-exceed $61,950 for the second extension option; an amount not-to-exceed $65,048 for the third extension; an amount not-to-exceed $68,300 for the fourth extension option for a total contract amount not-to-exceed $310,489 for all fees and expenses.

3.2      **Invoices.**

3.2.1      **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department**. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

| | City of Austin |
|---|---|
| Department | Austin Police Department |
| Attn: | Accounts Payable |
| Email Address | APDaccountspayable@austintexas.gov |

3.2.2    Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified.  Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number.  Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3    Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4    Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.  The City will furnish a tax exemption certificate upon request.

3.3    **Payment.**

3.3.1    All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2    **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3    The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1  delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2  third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3  failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4  damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5  reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6  failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7  failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4    Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5    Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds.  The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4     **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5     **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

      3.5.1     **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

      3.5.2     **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

      http://www.gsa.gov/portal/category/21287

      No amounts in excess of the Travel Policy or Rates shall be paid.  All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets).  No reimbursement will be made for expenses not actually incurred.  Airline fares in excess of coach or economy will not be reimbursed.  Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6     **Final Payment and Close-Out.**

      3.6.1     The making and acceptance of final payment will constitute:

            3.6.1.1  a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

            3.6.1.2  a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**SECTION 4. TERM AND TERMINATION**

4.1     **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 12 months. The Contract may be extended beyond the initial term for up to four additional 12 month periods at the City's sole option.

      4.1.1     If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period

4.2     **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3    **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4    **Termination For Cause**. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5    **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6    **Termination and Suspension of Service.**

> 4.6.1    In the event of a termination of the contract, the Contractor shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.

> 4.6.2    During any period of service suspension, the Contractor shall not take any action to intentionally erase any City data.

> 4.6.3    In the event of termination of any services or agreement in its entirety, the Contractor shall not take any action to intentionally erase any City data for a period of:
> * 10 days after the effective date of termination, if the termination is in accordance with the contract period
> * 30 days after the effective date of termination, if the termination is for convenience
> * 60 days after the effective date of termination, if the termination is for cause
> After such period, the Contractor shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.

> 4.6.4    The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.

> 4.6.5    The Contractor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of

Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.

4.7  **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## SECTION 5. OTHER DELIVERABLES

5.1  **Insurance**: The following insurance requirements apply.

### 5.1.1  **General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City.  Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10       The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and

endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11    The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12    The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13    The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14    The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2    **Specific Coverage Requirements**. The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1    **Commercial General Liability Insurance**. The minimum bodily injury and property damage per occurrence are $500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1    Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2    Contractor/Subcontracted Work.

5.1.2.1.3    Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4    Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5    Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6    The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2    **Business Automobile Liability Insurance**. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of $500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1    Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2    Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3    The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are $100,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1    The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2    Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3    Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1    **Equal Opportunity.**

5.2.1    **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2    **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.2    **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.3    **Delays.**

5.4.1    The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.3.2    Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.3.3    **Change Control and Advance Notice**: The Contractor shall give advance notice (to be determined at the contract time and included in the SLA) to the City of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

## SECTION 6. WARRANTIES

6.1    **Warranty – Performance**.

6.1.1    The Contractor represents and warrants that: (a) Subscription Services provided under any SaaS Subscription Schedule and Non-subscription Services provide under a Statement of Work shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) it shall use industry best practices to fulfill its obligations under ach SaaS Subscription Schedule and Statement of Work; and (c) any deliverables provided by Provider shall operate in conformance with the terms of this Master Software as a Service Agreement and the applicable SaaS Subscription Schedules and Statements of Work.

6.2    **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1    The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2    Unless otherwise specified in the Contract, the warranty period shall be <u>at least</u> one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3    If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

6.2.4    **Service Levels:**

A.    **Responsibilities and Uptime Guarantee:** The Contractor shall be responsible for the acquisition and operation of all technology capabilities needed to successfully provide the services to the public Internet. The technical and professional activities required for establishing, managing, and maintaining the environments are the responsibilities of the Contractor.

B. **Web Services:** The Contractor shall use Web services (as defined by the W3C Web Services Architecture Working Group); exclusively to interface with the City's data in near real time when possible.

C. **Encryption of Data at Rest:** The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the City approves the storage of personal data on a Contractor portable device in order to accomplish work as defined in the statement of work.

D. **Security Incident Security Service Level and Remedies**
   i. Provider shall have staff on duty and at its site 24x7 and capable of identifying, categorizing, and responding to a security incident;
   ii. Provider shall notify The City's currently-designated security manager of any new potential security vulnerability within eight hours of discovery and this notification will include the probable risks;
   iii. Provider shall implement a security fix across the application within eight hours of approval from Customer;
   iv. Provider shall notify the Customer security manager within two hours if it believes that an attack is in process or has occurred;
   v. Provider shall shut down ALL access to the application or any component of it associated with the Subscription Services within thirty minutes upon request of the Customer's currently-designated security manager;
   vi. Provider shall assist Customer in preparing written responses to audit requirements or findings without additional cost to the City;
   v. Provider warrants that it has successfully passed SAS 70 Type II Audit within the past twelve months, and will provide the documented audit results to Customer upon request.
   vi. Remedies may include: termination for cause.

E. **System Performance and Availability Service Level**
   i. Transactions processing must be available to the Internet 24x7.
   ii. 99.9% of all transactions process at no more than five seconds; no single transaction takes longer than five seconds to process; required service metrics apply 24x7.
   iii. Provider may have scheduled maintenance time up to six times per year at a mutually-agreeable time of day for a mutually-agreeable duration. Authorized maintenance windows are not counted against the availability.
   iv. Customer will receive service credits in the amount of 2% of the fees for the month for each day during which Provider fails to meet the service levels;
   v. If Provider's system response time is below the warranted level for two out of three consecutive weeks, Provider will be considered in Default;
   vi. The City may elect to use a third-party monitoring service using synthetic application monitoring from various geographic locations in the United States, and these third-party reports on service level compliance will be considered authoritative.

6.3      <u>**WARRANTY – AGAINST UNDISCLOSED ILIICIT CODE**</u>: Provider warrants that, unless authorized in writing by Client, any software program or any other part or portion of the Subscription Services or Non-subscription Services developed by Provider, passed through to Client from Third Parties under this Agreement or provided to Client by Provider for use by Provider or Client shall:

6.3.1      Not contain any hidden file;

6.3.2      Not replicate, transmit or activate itself without control of a human operating the computing equipment on which it resides;

6.3.3   Not alter, damage or erase any data or computer programs without control of a human operating the computing equipment on which it resides;

6.3.4   Not contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any software programs, Subscription Services or Non-subscription Services developed or data created under this Agreement, based on residency on a specific equipment configuration, frequency of duration of use or other limiting criteria;

6.3.5   Not contain any virus, malicious, illicit or similar unrequested code, whether known or unknown to Provider; and

6.3.6   Not use electronic self-help, including but not limited to preventing electronically Client's further or continued use of and/or access to the subscription Services, No-subscription Services or any software or other portion thereof.

6.3.7   Notwithstanding any provision in this Agreement to the contrary, if any Subscription Service or Non-subscription Service has any of the foregoing attributes (collectively "Illicit Code"), Provider shall be in default of this Agreement.  At the request of and at no cost to Client, Provider shall remove any such Illicit Code from the licensed software within 24 hours.

To protect Client from damages that may be caused intentionally or unintentionally by the introduction of Illicit Code into Client's computer systems, no software may be installed, executed or copied onto Client's equipment without an express warranty to Client that Illicit Code does not exist.  Such warranty shall be set forth on an exhibit attached to and made a part of this Agreement.

Provider agrees that in the event of any dispute with Client regarding an alleged breach of this Agreement, Provider shall not use any type of electronic means to prevent or interfere with Client's use of any portion of the Subscription Services and Non-subscription Services. Provider understands that a breach of this provision could foreseeably cause substantial harm to Client and to numerous Third Parties having business relationships with Client.

6.4   **WARRANTY – SOFTWARE**: Unless otherwise expressly provided in this Master Software as a Service Agreement, a SaaS Subscription Schedule or Statement of Work, Provider for itself and for and on behalf of its Contractors, licensors, employees and agents warrants that: (a) the functions contained in the Subscription Services and in any Non-subscription Services provided under this Agreement shall meet Client's requirements, (b) the operation of the Subscription Services and any Non-subscription Services shall be uninterrupted and error free, (c) the Subscription Services and any Non-subscription Services shall have the capacity to meet the demand during the times specified in the Subscription Services Schedule(s) and in the Statement(s) of Work for Non-subscription Services and (d) the Subscription Services shall work with future Desktop Specifications, as well as future releases of web browsers, and shall have both forward and backward functionality.  Provider shall be liable for any damages that Client may suffer arising out of use of, or inability to use, the Subscription Services and Non-subscription Services provided under this Agreement. Without limitation, Provider's indemnification obligation under this section includes any claim, damage, loss or expense arising from or in connection with any act by an agent, contractor, subcontractor, consultant, or employee of Provider that results in, or is intended by such agent, contractor, subcontractor, consultant, or employee to result in, harmful or otherwise unauthorized access into any of Client's systems, data, Client's Confidential Information, or Client's technology.

**SECTION 7.  MISCELLANEOUS**

7.1   **Data Location**: The Contractor shall provide its Services to the City and its end users solely from data centers in the U.S.  Storage of City Data at rest shall be located solely in data centers in the U.S.  The Contractor shall not allow its personnel or contractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The Contractor may provide technical

user support on a 24/7 basis using a support in other countries in order to provide round-the-clock support, unless otherwise prohibited in this contract.

7.2     **Import and Export of Data:** The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor. This includes the ability for the City to import or export data to/from other Contractors.

7.3     **Data:**

7.3.1     Data Ownership: The City will own all right, title and interest in its data that is related to the services provided by this contract. The Contractor shall not access City user accounts or City data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.

7.3.2     Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:

i.     The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own personal data and non-public data of similar kind.

ii.    All data obtained by the Contractor in the performance of this contract shall become and remain property of the City.

iii.   All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.

iv.    Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.

v.     At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the City.

vi.    The Contractor shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

7.3.3     **Compliance with Accessibility Standards:** The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

7.3.4     **Security:** The Contractor shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the Contractor. For example: virus checking and port sniffing – the City and the Contractor shall understand each other's roles and responsibilities.

7.3.5     **Security in Compliance with Chapter 521 of the Texas Business and Commerce Code:** Contractor shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any

security breach and proper methods of destroying records containing sensitive personal information.

7.3.6 **Security Incident or Data Breach Notification:** The Contractor shall inform the City of any security incident or data breach.

**i.   Incident Response:** The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

**ii.  Security Incident Reporting Requirements:** The Contractor shall report a security incident to the appropriate City identified contact immediately as defined in the SLA.

**iii. Breach Reporting Requirements:** If the Contractor has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

7.3.7 **Breach Responsibilities:** This section only applies when a data breach occurs with respect to personal data within the possession or control of Contractor.

**i.** The Contractor, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

**ii.** The Contractor, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

**iii.** Unless otherwise stipulated, if a data breach is a direct result of the Contractor's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently $201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

7.3.8 **Business Continuity and Disaster Recovery:** The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the City's recovery time objective (RTO) of two hours is met.

7.4 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby

releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.5 **Workforce.**

7.5.1   The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.5.2   The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

> 7.5.2.1  use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

> 7.2.2.2  use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.5.3   If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.5.4   Subcontractor Disclosure: The Contractor shall identify all of its strategic business partners related to services provided under this contract, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

7.5.5   Background Checks: The Contractor shall conduct criminal background checks and not utilize any staff, including Subcontractors, to fulfill the obligations of the Contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the City's information among the Contractor's employees and agents.

7.5.6   Non-disclosure and Separation of Duties: The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City data to that which is absolutely necessary to perform job duties.

7.5.7   Right to Remove Individuals: The City shall have the right at any time to require that the Contractor remove from interaction with City any Contractor representative who the City believes is detrimental to its working relationship with the Contractor. The City shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the City signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the contract or future work orders without the City's consent.

7.6 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from

and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.7     **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.7.1     disposal of major assets;

7.7.2     any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.7.3     any significant termination or addition of provider contracts;

7.7.4     the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.7.5     strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.7.6     reorganization, reduction and/or relocation in key personnel;

7.7.7     known or anticipated sale, merger, or acquisition;

7.7.8     known, planned or anticipated stock sales;

7.7.9     any litigation against the Contractor; or

7.7.10   significant change in market share or product focus.

7.8     **Audits and Records.**

7.8.1     The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.8.2     Records Retention:

7.8.2.1  Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.

7.8.2.2  All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.8.3     The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.8.4 **Access to Security Logs and Reports:** The Contractor shall provide security logs and reports to the City in plain text comma-delimited file unless otherwise agreed. Logs and reports shall include (but not limited to) date/time, user name/ID, accessing IP address, objects or files accessed, and actions performed on those, for all City files related to this contract.

7.8.5 **Data Center Audit:** The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The Contractor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

7.8.6 **Access to Security Logs and Reports:** The Contractor shall provide security logs and reports to the City in plain text comma-delimited file unless otherwise agreed. Logs and reports shall include (but not limited to) date/time, user name/ID, accessing IP address, objects or files accessed, and actions performed on those, for all City files related to this contract.

7.8.7 **Data Center Audit:** The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The Contractor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

7.9 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.10 **Indemnity.**

7.10.1 Definitions:

7.10.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.10.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.10.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.10.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.10.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT

**TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.11    **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.12    **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

| To the City: | To the Contractor: |
|---|---|
| City of Austin, Purchasing Office | Informa Systems, Inc |
| ATTN:  Contract Administrator | ATTN:  Contract Manager |
| P O Box 1088 | 1320 Arrow Point Dr |
|  | Suite 501 #TW79 |
| Austin, TX  78767 | Cedar Park, TX 78613 |

7.13    **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.14    **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.15    **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide

established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.16    **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.17    **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.18    **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.19    **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.20    **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.21    **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.22    **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.23    **Dispute Resolution.**

7.23.1    If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not

prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.23.2   If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.24   **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.24.1   All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.24.2   The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.24.3   If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.25   **Subcontractors.**

7.25.1   If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the

City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.25.2   Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.25.2.1   require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.25.2.2   prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.25.2.3   require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.25.2.4   require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.25.2.5   require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.25.3   The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.25.4   The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.26   **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.27   **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.28  **Holidays**. The following holidays are observed by the City:

| Holiday | Date Observed |
|---|---|
| New Year's Day | January 1 |
| Martin Luther King, Jr.'s Birthday | Third Monday in January |
| President's Day | Third Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | First Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Day | Fourth Thursday in November |
| Friday after Thanksgiving | Friday after Thanksgiving |
| Christmas Eve | December 24 |
| Christmas Day | December 25 |

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.29  **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.30  **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.31  **Incorporation of Documents. Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

7.32  **Order of Precedence.** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.32.1  the Supplemental Purchase Terms and Conditions;

7.32.2  the Standard Purchase Terms and Conditions;

7.32.3  the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

INFORMA SYSTEMS, INC.

By:__

Signature

Name: Mark P. Connolly

Printed Name

Title: CIO

Date: 7/19/2019

CITY OF AUSTIN

By:_____
Signature

Name: _____Daniel Dellemonache_____
Printed Name

Title: _____Procurement Specialist III_____

Date: 8/22/19

## List of Exhibits

Exhibit A  Informa Systems, Inc Pricing Agreement
Exhibit B  Informa Systems Statement of Work
Exhibit C  Non Discrimination Certification
Exhibit D  Non-Suspension or Debarment Certification

Quote

Informa Systems, Inc.
1320 Arrow Point Dr
Suite 501 #TW79
Cedar Park, TX 78613

| Bill To: | Deliver To: | Number: | 39423 APD |
|---|---|---|---|
| City of Austin/APD | City of Austin/APD | Date: | 4/24/2019 |
| Financial Management | Financial Management | Customer ID: | |
| PO Box 1629 | PO Box 1629 | Valid For: | 180 days |
| Austin, TX 78767-1629 | Austin, TX 78767-1629 | | |
| | | | |

| | Our # | Sales Rep | | Terms | Delivery |
|---|---|---|---|---|---|
| | | NA | | 30 net | |

| QTY | ITEM | ITEM # | DESCRIPTION | UNIT PR | TOTAL |
|---|---|---|---|---|---|
| 1 | 1 | INF_ONE_2019 | InformaOne system with support from Sept 12 2019 to Sept 11 2020 | $56,191 | $56,191 |
| 1 | 2 | INF_ONE_2020 | InformaOne system with support from Sept 12 2020 to Sept 11 2021 | $59,000 | $59,000 |
| 1 | 3 | INF_ONE_2021 | InformaOne system with support from Sept 12 2021 to Sept 11 2022 | $61,950 | $61,950 |
| 1 | 4 | INF_ONE_2022 | InformaOne system with support from Sept 12 2022 to Sept 11 2023 | $65,048 | $65,048 |
| 1 | 5 | INF_ONE_2023 | InformaOne system with support from Sept 12 2023 to Sept 11 2024 | $68,300 | $68,300 |
| | | | Cost | | $310,489.00 |

# SCOPE OF WORK

Austin Police Department

*Learning Management System*

# Contents

1

## 1.0 SCOPE OF WORK SUMMARY

The following is a summary for the Scope of Work for the *InformaOne* software solution

- **Availability:** The system will be available with an availability greater that 99.9%
- **Features:** The system will support, field training, student module, live classroom training, online learning and enrollment
- **Support:** Informa will provide support that is available 24x7, 365 days per year

The following are the details:

## 1.1 AVAILIBILITY

*InformaOne* will have an availability at least 99.9%, per calendar year – this is less than 9 hours of unmanaged downtime.

The server will periodically be taken off line for updates and servicing, but this will be agreed in advance with APD.

Full back up of data – once a week: Informa provide a full data back up once per week

Incremental backup of data – nightly: Informa provides nightly incremental backups

Informa will make it possible for APD (Austin Police Department) to audit backups. Furthermore, if APD requests a backup at any time, Informa Systems will make this available as a '.bak' file.

Off-site storage of weekly full backups Off site store is provided by the Carbonite

## 1.2 FEATURES

*The following are the modules that will be provided with the system:*

### Field Training Officer (FTO) Module:

*InformaOne* has the ability to manage field training, including DOR's weekly's and monthly's. Furthermore, the system allows all these reports to be customized including dimensions and grading. The following as some of the detailed features:

Comprehensive field training module including DORs, weekly's, monthlies etc.

Customized field training reports can be created such as DOR. Daily rating. Weekly, End of Phase etc.

Task list can be created with sign offs.

End of phase reports can be created and have chain of command sign offs

Tasks can be linked to classroom or online training.

2

A single report is available for all the training performed under the FTO.

All of the reports are auditable, with a login to record progress.

Student progress can be monitored throughout the FTO.

Sign Off on all of the reports supports chain of command type approval.

### Student Module:

*InformaOne* has the ability provide student ID, state reporting Id (such as PID) and an employee badge number.

Administrators can manage students within their organization level, including ability to add/modify students and or delete the students if their roles permit this action.

Statuses can be created and assigned to each student. These statuses are customizable. Status can be linked to login so that when a student is terminated they cannot login to the system.

Transcripts can be recorded for live and online learning and will include date/time, credit hours, CEUS, score and passing grades. For online learning the transcripts are recorded automatically.

Change the role of students (examples: instructor, supervisors, training coordinators, administrator, etc.): There are numerous roles that can be assigned to a student. The roles provide the ability to control the functionality and are linked to the permissions. Student can have multiple roles such as instructor and supervisor.

### Live Classroom Module:

Provide calendar view displaying live training schedule, by month view, week view or by day view: A live calendar is available, that displays the training schedule by month, week or day. The training schedule can be filtered by instructor, classroom, curriculum etc. Furthermore, the calendar view can be displayed as a list view.

Provide ability to schedule live training: Live training can be scheduled with the calendar, that includes date/time, course, instructor and classroom.

Ability to view training by course in each classroom:

Ability to add classroom inventory for live training, with a default classroom size and the ability to override this classroom size: Classroom inventory can be saved, so that a default classroom size can be assigned, with the ability to override this classroom size when scheduling the class.

Ability to filter calendar by classroom inventory or by course title: Calendar can be filter by classroom inventory or by course title:

3

Ability to preview class information by course details, enrollment or results: Class information can be previewed by course details (lesson plans), enrollment, results or waitlisting.

Ability to record completion grades for each classroom course: Grades can be recorded for each classroom course

Ability to add wait list for each class. Notify wait list changes by e-mail: Wait listing can be added to each class.

Ability to reschedule classes and provide e-mail notification: Classes can be re-schedule and email notification can be provided to the students, instructors etc.

Ability to record class grades, and set up custom rosters: Class grades can be recorded and custom rosters can be set-up.

Ability to provide roster of class attendees: A roster of class attendee can be created

Ability to add class schedule to Microsoft Outlook calendar: Classes can be added to the Microsoft Outlook calendar.

Ability to schedule a repeat class by day, week, month, quarter etc. The classes can be schedule as repeat type classes where they are repeated for a day week, etc.

Ability to record scores and create custom rosters with individual scores: Scores can be recorded, or custom rosters can be created with individual scores.

Ability to record grades and submit grade file to the state: Grades can be recorded, and the grade file can be submitted to the state.

Ability to manage Instructor conflicts: *InformaOne* allows instructor conflicts to be managed, to prevent double booking of instructors.

Ability to manage Instructor vacation/block off time: Instructor vacation and time off can be managed top prevent booking unavailable instructors.

### *Online Learning Module:*

Maintain and display course catalog that includes live and online courses: The catalog can contain both online and live courses. The courses can be assigned to categories.

Provide ability to create a live course: The live course is a template for the classes. The live courses can be assigned a lesson plan, reporting id, CEUs, training hours and also an pre-requisites.

Provide ability to add and upload online course: Online courses can be uploaded. *InformaOne* will unpack the online courses, using the Scorm standards.

4

Support interoperability standards including Aviation Industry Commission Computer-Base-Training (CBT) (AICC), Shareable Contents Object Reference Model (SCORM) 1.2 and SCORM 2004 compliant: InformaOne supports the AICC, Scorm1.2 and 2004 standards.

Support revisions and allow all the previous revisions to be saved: All of the live and online courses support revision management, where all changes are stored as a revision.

Include state reporting number in the course properties: All of the live and online courses can store the state Reporting number. This is critical is the system is uploaded to TCLOLE.

Assign the passing grade for each course and the ability to repeat once or multiple times: For online course rules can be created to repeat once or multiple times.

Assign reason for training for each course: Reason for training (that are customizable), can be assigned to each course

Allow the course catalog to be searched by course titles, topics, and/or keywords

Provide ability to group courses into categories: All the courses can be grouped in categories.

View existing categories and add, modify or delete categories and allow course view to be filtered by course category: Existing categories can be added, modified or deleted and all courses can be filtered by course categories.

courses can be previewed by clicking the course and this launches the course.

*InformaOne* supports interoperability and can provide course interoperability to ensure that the course tracks correctly.

Setup course as a policy/online or classroom course: Online courses, can be delivered as a policy or as a survey course.

Allow the administrator to remove from visibility courses without deleting it from the course library. Courses can be hidden – so that all of the records are stored, but the course is hidden when scheduling a class.

### Enrollment Module:

Enroll students in an online or scheduled classroom course, curriculum.

Create open or administrator enrolled courses that allow students to self-register: Courses can be set as open – where the class is filled on a first come first served version.

Allow partial open enrollment that allows enrollment to all by job title and/or organization level: The open enrollment options can be filtered by job title, function and/or organization.

5

Enroll students by organization level or by job title: Student can be enrolled by organization, job title, job function etc.

Send customized enrollment e-mails with mail merge fields: Students and or supervisors can be notified via email with mail merge fields.

Setup courses for supervisor approval and route enrollment requests to managers for approval: Course can be set up as Request type enrollment – where the approval process must be approved by the supervisor.

Setup emails and allow a single click course launch from the email: Students can be sent link to the course where the course can be launched directly from the email.

Allow individual number of attempts for each enrolled course: The number of attempts can be set for each student.

### *Reporting Module:*

*InformaOne* supports attendance reports and allows filtering by organization, classroom, course name and student.

*InformaOne* supports Compliance reports are available that are filterable by organization, title, course name and student.

Activity reports that show activity and participation and progress including pass/fail, CEUs and allow filtering by fields such organization, job title, classroom, course name and student:

Course reports that show course lists and includes course parameters such as CEUs, fees etc:

Student reports that show student lists, student demographics and allow filtering by fields such organization, job title, classroom, course name and student:

Student Organization reports allows filtering by fields such as organization, job title, classroom, course name and student.

Custom reports can be created using stored procedures.

All the reports can be exported by PDFs, Excel and Word.

### 1.3 SUPPORT

Informa Systems provides 24x7 support either by email or telephone. This support will be provided either via telephone or via e-mail. Informa Systems shall strive to resolve all issues as quickly as possible, with precedence and timetables being determined in accordance with the following priorities, which will be assigned by the designated liaisons in exercise of their reasonable discretion:

6

- Priority 1: Critical items (such as inability to login). Response will be immediate, and the issue will be resolved within one hour.
- Priority 2: Important items (such as software issues that have no workaround). These issues will be resolved within eight hours.
- Priority 3: Issues that have a workaround. These issues will be resolved within 48 hours.

Informa Systems will notify the designated liaisons immediately if additional time will be required to resolve a particular issue, with such notice to include an estimate as to when the issue is anticipated to be resolved

7

**EXHIBIT C**
**City of Austin, Texas**
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**

**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

(1) Not to engage in any discriminatory employment practice defined in this chapter.

(2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.

(3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.

(4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.

(5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.

(6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.

(7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of $2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.
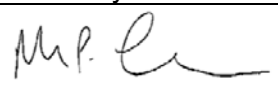
**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 7th Day of July 2019

| | |
|---|---|
| CONTRACTOR | Informa Systems Inc |
| Authorized Signature | _MrP. ℓu_ |
| Title | CIO |

**EXHIBIT D**
**City of Austin, Texas**
**Section 0805**
**NON-SUSPENSION OR DEBARMENT CERTIFICATION**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of $25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of $25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

| | |
|---|---|
| Contractor's Name: | Informa Systems Inc |
| Signature of Officer or Authorized Representative: | Date: 7/19/2019 |
| Printed Name: | Mark P. Connolly |
| Title | CIO |

# City of Austin Purchasing Office

## Sole Source
## Certificate of Exemption

DATE: 05/06/19

TO:      Purchasing Officer or Designee

PURCHASING POC:

DEPT: Police

FROM: Enjolé Armstrong

PHONE: 512-974-5082

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than $50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:
Link to Local Government Code

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1.  The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

    Please check the criteria listed below that applies to this sole source request:

    - ☑ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
    - ☐ Films, manuscripts or books that are available from only one source.
    - ☐ Gas, water and other utilities that are available from only one source.
    - ☐ Captive replacement parts or components for equipment that are only available from one source.
    - ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
    - ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:
   - What it is for and why it is needed?
     - o This contract is for the continued licensing, maintenance and support of a hosted training software solution, InformaOne, which is currently in use by APD. It is used to run the online and live classroom training and FTO program at the department.
   - What is the municipal purpose that this procurement addresses or furthers?
     - o Informa houses all the training information in one location. It facilitates effective utilization of limited resources by providing training which can be tailored and pushed out quickly and effectively to over 2000 employees. Supervisors are easily able to assign and check the training progress of their Officers and employees. The system includes tracking, reports, and maintenance. It also communicated with TCLEDDS, the software used to send information from APD to the licensing agency, TCLEOSE. Informa is able to modify their system to meet any regulatory changes required by TCLEOSE at no additional cost.
   - Why is the procurement a sole source?
     - o Informa Systems is the creator and owner of the software and is the only company able to offer the licensing, support and maintenance of this proprietary software.
   - Has this procurement or a similar procurement been competitively solicited in the past?
     - o No, the current contract was purchased via a sole source exemption.
   - Why is the vendor the only viable solution?
     - o Informa Systems is the creator and owner of the software and is the only company able to offer the licensing, support and maintenance of this proprietary software.
   - Are there any other alternative solutions? If so, why are those alternatives unacceptable?
     - o There is currently no other software solution which offers these critical features or ability to interface with TCLEDDS.
   - Is there a concern regarding warranty, compatibility, and/or routine safety?
     - o Yes, Informa Systems is the sole company that can support the InformaOne software solution.
   - Are there territorial or geographic restrictions for the product distribution and sale?
     - o No.
   - Are there other resellers, distributors, or dealers in the market?
     - o No.
   - What other suppliers or products/services were considered?
     - o None.
   - If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
     - o N/A
   - Is there a way to retrofit another brand? What is this estimated associated cost?
     - o N/A
   - What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
   - **Prices were determined to be reasonable based on the following (select all that apply):**

     ☒ Prices are the same or similar to current City contract.
     Notes: NS140000044

     ☐ Prices are the same or similar to current contract with another government.
     Notes: At a minimum, note the contract number, title and government that created the contract.

     ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
     Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).

     ☐ Prices are established by law or regulation.

Notes: At a minimum, note the legal or regulatory reference that established the prices.

☐ Other means of determining Price Reasonableness.
Notes: Describe any other source that was used to establish Price Reasonableness.

\* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

---

This contract is for the continued licensing, maintenance and support of a hosted training software solution, InformaOne, which is currently in use by APD. It is used to run the online and live classroom training and FTO program at the department.

Informa houses all the training information in one location. It facilitates effective utilization of limited resources by providing training which can be tailored and pushed out quickly and effectively to over 2000 employees. Supervisors are easily able to assign and check the training progress of their Officers and employees. The system includes tracking, reports, and maintenance. It also communicated with TCLEDDS, the software used to send information from APD to the licensing agency, TCLEOSE. Informa is able to modify their system to meet any regulatory changes required by TCLEOSE at no additional cost.

3.  Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
    ☑ Scope of Work or Statement of Work or Vendor Proposal
    ☑ Vendor's Quote
    ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
    ☑ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why

4.  Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

    (Vendor Name): _____Informa Systems_____ for

    (Description of Procurement): _____Continued software, support and maintenance for APD

    InformaOne software_____

5.  Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

    ☐ This is a one-time request for $_____
    ☑ This is a multi-term contract request for ____12___ (# months for base term) in the amount of $____56,191_____ with ____4_____ (# of renewal options) for $_____59,000, $61,950, $65,048, and $68,300_____ each for a total contract amount of $_____310,489_____.

Recommended
Certification                _____  5/6/19
                             Originator                        Date

Approved
Certification                _____  5/7/19
                             Department Director or designee   Date

                             _____  5/8/2019
                             Assistant City Manager / General Manager    Date
                             (procurements requiring Council approval)

Purchasing Office
Review                       _____
                             Authorized Purchasing Office Staff          Date

Purchasing Office
Management Review            _____
                             Purchasing Officer or designee              Date
                             (procurements requiring Council approval)

Informa
SYSTEMS

April 23rd, 2019

City of Austin
Austin Police Department
Financial Management
P.O. Box 1629
Austin, TX 78767-1629

Sole Source Letter for *InformaOne* software solution

Informa Systems is the creator and provider of the *InformaOne* software solution that is used by the Austin Police Department. Informa Systems is the only provider of this software and is the only company that can provide and support the *InformaOne* software solution.

Specifically:

- Informa Systems is the creator and sole owner of the *InformaOne* software solution
- Informa Systems is the sole company that can support the *InformaOne* software solution
- Informa Systems is the sole company that can develop and implement enhancements for the *InformaOne* software solution

Sincerely,

Mark P. Connolly
Chief Implementation Officer